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Eferton DMCC

10 UNITED STATES DISTRICT COURT  
11 CENTRAL DISTRICT OF CALIFORNIA  
12

13 Eferton DMCC,

14 Plaintiff,

15 v.

16 Asia-Global Renewable Energy Corp.,  
17 et al.,

18 Defendants.  
19

Case No. 2:15-cv-09295-R-SP

**STIPULATED PROTECTIVE  
ORDER**

21 **1.A. PURPOSES AND LIMITATIONS**

22 Discovery in this action is likely to involve production of confidential,  
23 proprietary, or private information for which special protection from public  
24 disclosure and from use for any purpose other than prosecuting this litigation may  
25 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to  
26 enter the following Stipulated Protective Order. The parties acknowledge that this  
27 Order does not confer blanket protections on all disclosures or responses to  
28

1 discovery and that the protection it affords from public disclosure and use extends  
2 only to the limited information or items that are entitled to confidential treatment  
3 under the applicable legal principles. The parties further acknowledge, as set forth  
4 in Section 12.3, below, that this Stipulated Protective Order does not entitle them to  
5 file confidential information under seal; Civil Local Rule 79-5 sets forth the  
6 procedures that must be followed and the standards that will be applied when a  
7 party seeks permission from the court to file material under seal.

8 **B. GOOD CAUSE STATEMENT**

9 Plaintiff Eferton DMCC operated a sophisticated business in the competitive  
10 raw commodities industry during the time period relevant to this lawsuit,  
11 specializing in trading non-ferrous metal products and raw materials and other  
12 specialized transactions. Defendants Asia-Global Renewable Energy Corp., DJL  
13 Mining Corp., and DJL Mining LLC similarly operate sophisticated businesses  
14 related to the metals industry. This action is likely to involve valuable research,  
15 market analysis, development, commercial, financial, technical and/or proprietary  
16 information related to the metal markets and to transactions that take place within  
17 those markets for which special protection from public disclosure and from use for  
18 any purpose other than prosecution of this action is warranted. Such confidential  
19 and proprietary materials and information may consist of, among other things,  
20 confidential business or financial information, information regarding confidential  
21 business practices, or other confidential research, development, or commercial  
22 information (including information implicating privacy rights of third parties),  
23 information otherwise generally unavailable to the public, or which may be  
24 privileged or otherwise protected from disclosure under state or federal statutes,  
25 court rules, case decisions, or common law. Accordingly, to expedite the flow of  
26 information, to facilitate the prompt resolution of disputes over confidentiality of  
27 discovery materials, to adequately protect information the parties are entitled to  
28 keep confidential, to ensure that the parties are permitted reasonable necessary uses

of such material in preparation for and in the conduct of trial, to address their handling at the end of the litigation, and serve the ends of justice, a protective order for such information is justified in this matter. It is the intent of the parties that information will not be designated as confidential for tactical reasons and that nothing be so designated without a good faith belief that it has been maintained in a confidential, non-public manner, and there is good cause why it should not be part of the public record of this case.

## **2. DEFINITIONS**

2.1 Action: this pending federal law suit, *Eferton DMCC v. Asia-Global Renewable Energy Corp. et al.*, case number 2:15-cv-09295-R-SP.

2.2 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their support staff).

2.5 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

2.6 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this Action, or who is anticipated to

1 otherwise provide expert testimony under Federal Rule of Evidence 702, 703, or  
2 705.

3 2.8 House Counsel: attorneys who are employees of a party to this Action.  
4 House Counsel does not include Outside Counsel of Record or any other  
5 outside counsel.

6 2.9 Non-Party: any natural person, partnership, corporation, association, or  
7 other legal entity not named as a Party to this action.

8 2.10 Outside Counsel of Record: attorneys who are not employees of a  
9 party to this Action but are retained to represent or advise a party to this Action and  
10 have appeared in this Action on behalf of that party or are affiliated with a law firm  
11 which has appeared on behalf of that party, and includes support staff.

12 2.11 Party: any party to this Action, including all of its officers, directors,  
13 employees, consultants, retained experts, and Outside Counsel of Record (and their  
14 support staffs).

15 2.12 Producing Party: a Party or Non-Party that produces Disclosure or  
16 Discovery Material in this Action.

17 2.13 Professional Vendors: persons or entities that provide litigation  
18 support services (e.g., photocopying, videotaping, translating, preparing exhibits or  
19 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
20 and their employees and subcontractors.

21 2.14 Protected Material: any Disclosure or Discovery Material that is  
22 designated as "CONFIDENTIAL."

23 2.15 Receiving Party: a Party that receives Disclosure or Discovery  
24 Material from a Producing Party.

### 25 **3. SCOPE**

26 The protections conferred by this Stipulation and Order cover not only  
27 Protected Material (as defined above), but also (1) any information copied or  
28 extracted from Protected Material; (2) all copies, excerpts, summaries, or

1 compilations of Protected Material; and (3) any testimony, conversations, or  
 2 presentations by Parties or their Counsel that might reveal Protected Material. Any  
 3 use of Protected Material at trial shall be governed by the orders of the trial judge.  
 4 This Order does not govern the use of Protected Material at trial.

#### 5 **4. DURATION**

6 Even after final disposition of this litigation, the confidentiality obligations  
 7 imposed by this Order shall remain in effect until a Designating Party agrees  
 8 otherwise in writing or a court order otherwise directs. Final disposition shall be  
 9 deemed to be the later of (1) dismissal of all claims and defenses in this Action,  
 10 with or without prejudice; and (2) final judgment herein after the completion and  
 11 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,  
 12 including the time limits for filing any motions or applications for extension of time  
 13 pursuant to applicable law.

#### 14 **5. DESIGNATING PROTECTED MATERIAL**

##### 15 5.1 Exercise of Restraint and Care in Designating Material for Protection.

16 Each Party or Non-Party that designates information or items for protection under  
 17 this Order must take care to limit any such designation to specific material that  
 18 qualifies under the appropriate standards. The Designating Party must designate for  
 19 protection only those parts of material, documents, items, or oral or written  
 20 communications that qualify so that other portions of the material, documents,  
 21 items, or communications for which protection is not warranted are not swept  
 22 unjustifiably within the ambit of this Order.

23 Mass, indiscriminate, or routinized designations are prohibited. Designations  
 24 that are shown to be clearly unjustified or that have been made for an improper  
 25 purpose (e.g., to unnecessarily encumber the case development process or to  
 26 impose unnecessary expenses and burdens on other parties) may expose the  
 27 Designating Party to sanctions.

28 If it comes to a Designating Party's attention that information or items that it

1 designated for protection do not qualify for protection, that Designating Party must  
2 promptly notify all other Parties that it is withdrawing the inapplicable designation.

3 5.2 Manner and Timing of Designations. Except as otherwise provided in  
4 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise  
5 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
6 under this Order must be clearly so designated before the material is disclosed or  
7 produced.

8 Designation in conformity with this Order requires:

9 (a) for information in documentary form (e.g., paper or electronic  
10 documents, but excluding transcripts of depositions or other pretrial or trial  
11 proceedings), that the Producing Party affix at a minimum, the legend  
12 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that  
13 contains protected material. If only a portion or portions of the material on a page  
14 qualifies for protection, the Producing Party also must clearly identify the protected  
15 portion(s) (e.g., by making appropriate markings in the margins).

16 A Party or Non-Party that makes original documents available for inspection  
17 need not designate them for protection until after the inspecting Party has indicated  
18 which documents it would like copied and produced. During the inspection and  
19 before the designation, all of the material made available for inspection shall be  
20 deemed “CONFIDENTIAL.” After the inspecting Party has identified the  
21 documents it wants copied and produced, the Producing Party must determine  
22 which documents, or portions thereof, qualify for protection under this Order. Then,  
23 before producing the specified documents, the Producing Party must affix the  
24 “CONFIDENTIAL legend” to each page that contains Protected Material. If only a  
25 portion or portions of the material on a page qualifies for protection, the Producing  
26 Party also must clearly identify the protected portion(s) (e.g., by making  
27 appropriate markings in the margins).

28 (b) for testimony given in depositions that the Designating Party

1 identify the Disclosure or Discovery Material on the record, before the close of the  
2 deposition all protected testimony.

3 (c) for information produced in some form other than documentary and  
4 for any other tangible items, that the Producing Party affix in a prominent place on  
5 the exterior of the container or containers in which the information is stored the  
6 legend "CONFIDENTIAL." If only a portion or portions of the information  
7 warrants protection, the Producing Party, to the extent practicable, shall identify the  
8 protected portion(s).

9 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
10 failure to designate qualified information or items does not, standing alone, waive  
11 the Designating Party's right to secure protection under this Order for such  
12 material. Upon timely correction of a designation, the Receiving Party must make  
13 reasonable efforts to assure that the material is treated in accordance with the  
14 provisions of this Order.

## 15 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

16 6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
17 designation of confidentiality at any time that is consistent with the Court's  
18 Scheduling Order.

19 6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
20 resolution process under Local Rule 37.1 et seq.

21 6.3 The burden of persuasion in any such challenge proceeding shall be on  
22 the Designating Party. Frivolous challenges, and those made for an improper  
23 purpose (e.g., to harass or impose unnecessary expenses and burdens on other  
24 parties) may expose the Challenging Party to sanctions. Unless the Designating  
25 Party has waived or withdrawn the confidentiality designation, all parties shall  
26 continue to afford the material in question the level of protection to which it is  
27 entitled under the Producing Party's designation until the Court rules on the  
28 challenge.



## 7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this Action only for prosecuting, defending, or attempting to settle this Action. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the Action has been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “CONFIDENTIAL” only to:

(a) the Receiving Party’s Outside Counsel of Record in this Action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this Action;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this Action;

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the court and its personnel;

(e) court reporters and their staff;

(f) professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);



(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

(h) during their depositions, witnesses, and attorneys for witnesses, in The Action to whom disclosure is reasonably necessary provided: (1) the deposing party requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will not be permitted to keep any confidential information unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

(i) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

## **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION**

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this

1 action as “CONFIDENTIAL” before a determination by the court from which the  
 2 subpoena or order issued, unless the Party has obtained the Designating Party’s  
 3 permission. The Designating Party shall bear the burden and expense of seeking  
 4 protection in that court of its confidential material and nothing in these provisions  
 5 should be construed as authorizing or encouraging a Receiving Party in this Action  
 6 to disobey a lawful directive from another court.

7 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**  
 8 **PRODUCED IN THIS LITIGATION**

9 (a) The terms of this Order are applicable to information produced by a  
 10 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information  
 11 produced by Non-Parties in connection with this litigation is protected by the  
 12 remedies and relief provided by this Order. Nothing in these provisions should be  
 13 construed as prohibiting a Non-Party from seeking additional protections.

14 (b) In the event that a Party is required, by a valid discovery request, to  
 15 produce a Non-Party’s confidential information in its possession, and the Party is  
 16 subject to an agreement with the Non-Party not to produce the Non-Party’s  
 17 confidential information, then the Party shall:

18 (1) promptly notify in writing the Requesting Party and the Non-  
 19 Party that some or all of the information requested is subject to a confidentiality  
 20 agreement with a Non-Party;

21 (2) promptly provide the Non-Party with a copy of the Stipulated  
 22 Protective Order in this Action, the relevant discovery request(s), and a reasonably  
 23 specific description of the information requested; and

24 (3) make the information requested available for inspection by the  
 25 Non-Party, if requested.

26 (c) If the Non-Party fails to seek a protective order from this court  
 27 within 14 days of receiving the notice and accompanying information, the  
 28 Receiving Party may produce the Non-Party’s confidential information responsive

1 to the discovery request. If the Non-Party timely seeks a protective order, the  
2 Receiving Party shall not produce any information in its possession or control that  
3 is subject to the confidentiality agreement with the Non-Party before a  
4 determination by the court. Absent a court order to the contrary, the Non-Party shall  
5 bear the burden and expense of seeking protection in this court of its Protected  
6 Material.

#### 7 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

8 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
9 Protected Material to any person or in any circumstance not authorized under this  
10 Stipulated Protective Order, the Receiving Party must immediately (a) notify in  
11 writing the Designating Party of the unauthorized disclosures, (b) use its best  
12 efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the  
13 person or persons to whom unauthorized disclosures were made of all the terms of  
14 this Order, and (d) request such person or persons to execute the “Acknowledgment  
15 and Agreement to Be Bound” that is attached hereto as Exhibit A.

#### 16 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE** 17 **PROTECTED MATERIAL**

18 When a Producing Party gives notice to Receiving Parties that certain  
19 inadvertently produced material is subject to a claim of privilege or other  
20 protection, the obligations of the Receiving Parties are those set forth in Federal  
21 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify  
22 whatever procedure may be established in an e-discovery order that provides for  
23 production without prior privilege review. Pursuant to Federal Rule of Evidence  
24 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure  
25 of a communication or information covered by the attorney-client privilege or work  
26 product protection, the parties may incorporate their agreement in the stipulated  
27 protective order submitted to the court.

#### 28 **12. MISCELLANEOUS**

1           12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
2 person to seek its modification by the Court in the future.

3           12.2 Right to Assert Other Objections. By stipulating to the entry of this  
4 Protective Order no Party waives any right it otherwise would have to object to  
5 disclosing or producing any information or item on any ground not addressed in  
6 this Stipulated Protective Order. Similarly, no Party waives any right to object on  
7 any ground to use in evidence of any of the material covered by this Protective  
8 Order.

9           12.3 Filing Protected Material. A Party that seeks to file under seal any  
10 Protected Material must comply with Civil Local Rule 79-5. Protected Material  
11 may only be filed under seal pursuant to a court order authorizing the sealing of the  
12 specific Protected Material at issue. If a Party's request to file Protected Material  
13 under seal is denied by the court, then the Receiving Party may file the information  
14 in the public record unless otherwise instructed by the court.

### 15 **13. FINAL DISPOSITION**

16           After the final disposition of this Action, as defined in paragraph 4, within 60  
17 days of a written request by the Designating Party, each Receiving Party must  
18 return all Protected Material to the Producing Party or destroy such material. As  
19 used in this subdivision, "all Protected Material" includes all copies, abstracts,  
20 compilations, summaries, and any other format reproducing or capturing any of the  
21 Protected Material. Whether the Protected Material is returned or destroyed, the  
22 Receiving Party must submit a written certification to the Producing Party (and, if  
23 not the same person or entity, to the Designating Party) by the 60 day deadline that  
24 (1) identifies (by category, where appropriate) all the Protected Material that was  
25 returned or destroyed and (2) affirms that the Receiving Party has not retained any  
26 copies, abstracts, compilations, summaries or any other format reproducing or  
27 capturing any of the Protected Material. Notwithstanding this provision, Counsel  
28 are entitled to retain an archival copy of all pleadings, motion papers, trial,

1 deposition, and hearing transcripts, legal memoranda, correspondence, deposition  
2 and trial exhibits, expert reports, attorney work product, and consultant and expert  
3 work product, even if such materials contain Protected Material. Any such archival  
4 copies that contain or constitute Protected Material remain subject to this Protective  
5 Order as set forth in Section 4 (DURATION).

6 14. Any violation of this Order may be punished by any and all appropriate  
7 measures including, without limitation, contempt proceedings and/or monetary  
8 sanctions. IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

9  
10 Dated: August 22, 2016

Dechert LLC

By: /s/ Anna Do

Anna Do

*Attorneys for Plaintiff*

*Eferton DMCC*

11  
12  
13  
14 Dated: August 22, 2016

Bryan Cave

By: /s/ Jonathan G. Fetterly

Jonathan G. Fetterly

*Attorneys for Defendants Asia-Global*

*Renewable Energy Corp., DJL*

*Mining, LLC, and DJL Mining Corp.*

15  
16  
17  
18 **ATTESTATION PURSUANT TO LOCAL RULE 5-4.3.4**

19 This certifies, pursuant to Local Rule 5-4.3.4, that all signatories to this  
20 document concur in its content and have authorized this filing.

21 /s/ Anna Do

22 Anna Do

23 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

24 DATED: August 24, 2016

25  
26 

27 Manuel L. Real

28 United States District Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare under penalty of perjury  
that I have read in its entirety and understand the Stipulated Protective Order that  
was issued by the United States District Court for the Central District of California  
on [date] in the case of *Eferton DMCC v. Asia-Global Renewable Energy Corp. et*  
*al.*, Case Number 2:15-cv-09295-R-SP. I agree to comply with and to be bound by  
all the terms of this Stipulated Protective Order and I understand and acknowledge  
that failure to so comply could expose me to sanctions and punishment in the nature  
of contempt. I solemnly promise that I will not disclose in any manner any  
information or item that is subject to this Stipulated Protective Order to any person  
or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court  
for the Central District of California for the purpose of enforcing the terms of this  
Stipulated Protective Order, even if such enforcement proceedings occur after  
termination of this action. I hereby appoint \_\_\_\_\_ [print  
or type full name] of \_\_\_\_\_ [print or type  
full address and telephone number] as my California agent for service of process in  
connection with this action or any proceedings related to enforcement of this  
Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_